

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

PAMELA STICKLER,

Plaintiff,

v.

SAN DIEGO POLICE DEPT.,

Defendant.

Case No. 12cv387 BTM(WMc)

**ORDER GRANTING MOTION TO  
PROCEED IN FORMA PAUPERIS;  
DISMISSING COMPLAINT FOR  
FAILURE TO STATE A CLAIM; AND  
DENYING MOTION FOR  
APPOINTMENT OF COUNSEL**

On February 13 , 2012, Plaintiff filed a Complaint in addition to a Motion to Proceed In Forma Pauperis ("IFP Motion") and a Request for Appointment of Counsel. For the reasons discussed below, the IFP Motion is granted, the Complaint is dismissed with leave to amend, and the Request for Appointment of Counsel is denied without prejudice.

**DISCUSSION**

**I. Motion to Proceed IFP**

Upon review of Plaintiff's affidavit in support of her IFP Motion, the Court finds that Plaintiff has made a sufficient showing of inability to pay the filing fees required to prosecute this action. Accordingly, Plaintiff's IFP Motion is **GRANTED**.

**II. Failure to State a Claim**

Although the Court will allow Plaintiff to proceed IFP, Plaintiff's Complaint must be dismissed for failure to state a claim. The Court is under a continuing duty to dismiss an IFP case whenever the Court determines that the action "fails to state a claim on which relief may be granted." 28 U.S.C. § 1915(e)(2)(B)(ii).

1 In her Complaint, Plaintiff complains about a series of events involving the police.  
2 Among other things, Plaintiff alleges that the police would not tell people at the Chabad to  
3 open the door to allow her to stay there, handcuffed her at least four times without Miranda  
4 rights, "bruised her leg" on one occasion, did not come quickly when St. Patrick's Church  
5 threw her out, and did not do anything when security guards at Los Americas Shopping  
6 Center kept telling her to leave. Plaintiff does not provide any factual detail about the  
7 incidents and does not identify which Constitutional rights or federal statutes were violated.

8 Plaintiff's bare allegations do not establish a plausible claim for relief. It appears that  
9 Plaintiff may wish to bring a claim under 42 U.S.C. § 1983 for excessive force in violation of  
10 the Fourth Amendment. If so, Plaintiff must identify the date of the incident, who was  
11 involved, and what happened. It is unclear if Plaintiff is alleging false arrest. If Plaintiff  
12 intends to allege that she was falsely arrested on one or more occasions, she must identify  
13 the date of the arrest, what she was arrested for, who arrested her, the circumstances of the  
14 arrest, and the disposition of the criminal case. To the extent Plaintiff wishes to allege any  
15 other violation of the Constitution, such as violation of due process or discriminatory  
16 treatment, Plaintiff must specifically identify what rights she claims has been violated and  
17 what actions the police took to violate those rights.

18 The Court will grant Plaintiff leave to file an amended complaint. The amended  
19 complaint should include a short and plain statement of the grounds for this Court's  
20 jurisdiction, a short and plain statement of the legal claim(s) being asserted, and a demand  
21 for judgment for the relief sought. Fed. R. Civ. P. 8(a). With respect to the legal claims,  
22 Plaintiff should specify who did what, when the events occurred, and how Plaintiff was  
23 harmed by the alleged wrongful conduct.

24 Regarding the form of the amended complaint, Plaintiff must abide by Rule 10 of the  
25 Federal Rules of Civil Procedure. Among other things, Rule 10 requires that a party "state  
26 its claims in numbered paragraphs, each limited as far as practicable to a single set of  
27 circumstances." Fed. R. Civ. P. 10(b).

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1 III. Request for Appointment of Counsel

2 Plaintiff has filed a Request for Appointment of Counsel. (Plaintiff used the form for  
3 appointment of counsel under 42 U.S.C. § 2000e-5(f)(1), but it does not appear that this is  
4 a Title VII case.)

5 There is no right to counsel in civil cases, and district courts may appoint counsel only  
6 under “exceptional circumstances.” Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991).  
7 “A finding of exceptional circumstances requires an evaluation of both ‘likelihood of success  
8 on the merits and the ability of the plaintiff to articulate his claims pro se in light of the  
9 complexity of the legal issues involved.’ Neither of these issues is dispositive and both must  
10 be viewed together before reaching a decision.” Id.

11 At this point in time, the Court cannot say that there is any likelihood of success on  
12 the merits. Therefore, the Court **DENIES** without prejudice Plaintiff’s Motion for Appointment  
13 of Counsel.

14  
15 **CONCLUSION**

16 Plaintiff’s Motion to Proceed IFP is **GRANTED**. However, Plaintiff’s Complaint is  
17 **DISMISSED** without prejudice for failure to state a claim upon which relief may be granted.  
18 Plaintiff may file a First Amended Complaint on or before **March 19, 2012**. If Plaintiff fails  
19 to do so, the Court shall close this case. Plaintiff’s request for appointment of counsel is  
20 **DENIED WITHOUT PREJUDICE**.

21 **IT IS SO ORDERED.**

22 DATED: February 24, 2012

23   
24 BARRY TED MOSKOWITZ, Chief Judge  
25 United States District Court  
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